

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION

CLERK'S OFFICE U.S. DIST. COURT
AT LYNCHBURG, VA
FILED

JAN 31 2005

JOHN E. CORCORAN, CLERK
BY:

1 DEPUTY CLERK

UNITED STATES OF AMERICA,

Plaintiff,

v.

THOMASVILLE FURNITURE
INDUSTRIES, INC.; UNIVAR U.S.A.,
INC.; AND BUCKINGHAM COUNTY
BOARD OF SUPERVISORS ON
BEHALF OF BUCKINGHAM COUNTY,
A POLITICAL SUB-DIVISION OF THE
COMMONWEALTH OF VIRGINIA,

Defendants.

Civil Action No. 6:05 CV00001

Judge Norman K. Moon

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

PRELIMINARY STATEMENT OF THE CASE

1. This is a civil action brought pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, ("CERCLA"), 42 U.S.C. § 9607, for recovery of costs incurred in response to releases and threatened releases of hazardous substances at the Buckingham County Landfill Superfund Site ("the Site") in Dillwyn, Virginia located in the County of Buckingham. This action also seeks a declaratory judgment finding that defendants are liable for future response costs relating to the Site pursuant to Section 113(g)(2), 42 U.S.C. § 9613(g)(2).

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b) and (c), because the claims arose and the threatened and actual releases of hazardous substances occurred in this district.

DEFENDANTS

4. Thomasville Furniture Industries, Inc. ("Thomasville") is a corporation organized and incorporated under the laws of the State of Delaware.

5. Univar U.S.A., Inc. ("Univar") is a corporation organized under the laws of the State of Washington. Univar U.S.A. is the corporate successor to the Prillaman Company ("Prillaman").

6. Both Thomasville and Prillaman, by contract, agreement or otherwise, arranged for the disposal or treatment, or arranged with a transporter for transport for disposal or treatment, at the Site of hazardous substances owned or possessed by such Defendant.

7. Buckingham County is a political subdivision of the Commonwealth of Virginia. Buckingham County currently owns the Site, or a portion of the Site.

8. Each of the above-referenced defendants is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

GENERAL ALLEGATIONS

9. The Buckingham County Landfill Superfund Site consists of approximately 125 acres of woodlands with an estimated eight acres cleared for landfill operations. The Site is located in Dillwyn, Virginia in the County of Buckingham about 1.5 miles southwest of the intersection of U.S. 60 and U.S. 15 on County Road 640.

10. The Site was operated as a landfill from approximately 1962 to 1982.

11. From approximately 1976 to 1981, Thomasville arranged for the disposal of waste at the Site.

12. The waste from Thomasville disposed at the Site included materials, such as polyester filler containing 5% vinyl toluene diluent, reclaimed lacquer thinner, steel wool containing dried glazes, stains, finishes, or lacquers, peel coating residue, and air filters from paint spray booths, which contained hazardous substances as defined by

Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), including, but not limited, to toluene.

13. From approximately 1981 through 1982, the Prillaman Company arranged for the disposal of drums of solid still bottoms at the Site.

14. The drums of still bottoms from the Prillaman Company contained hazardous substances as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), including, but not limited to, acetone, arsenic, barium, chromium and toluene.

15. On or about October 31, 1985, the Prillaman Company was merged into the Prillaman Chemical Corporation. In approximately January 2001, the Prillaman Chemical Corporation was merged into Van Waters and Rogers, Inc. In approximately April 2001, Van Waters and Rogers, Inc. was renamed Vopak U.S.A. On or about July 1, 2002, Vopak U.S.A. changed its name to Univar U.S.A.

16. Univar U.S.A., Inc. is the corporate successor to the Prillaman Company.

17. Buckingham County purchased the Site, or a portion of the Site, in 1982, and is the current owner of the Site, or a portion of the Site.

18. The Site was listed on the National Priorities List ("NPL") on October 4, 1989. 54 Fed. Reg. 41015.

19. A Remedial Investigation ("RI") for the Site was performed between 1991-1992. Samples collected during the RI indicated the presence at the Site of "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). The RI demonstrated that soils, leachate seeps and groundwater at the Site were contaminated with volatile organic compounds ("VOCs") and metals. Specifically, the VOCs included methylene chloride, 1,1-dichloroethene, 1,1,1-trichloroethane, trichloroethene, tetrachloroethene, and toluene. The metals included aluminum, barium, beryllium, chromium, cobalt, magnesium, nickel, and vanadium.

20. There has been a "release" and/or "threatened release" of a "hazardous substance" into the environment at and from the Site, as defined by Sections 101(14), 101(22), and 107(a) of CERCLA, 42 U.S.C. §§ 9601(14), 9601(22), 9607(a).

21. The Site is a "facility" within the meaning of Section 101(9) of CERCLA,

42 U.S.C. § 9601(9) because it is a landfill and an area where a hazardous substance has otherwise come to be located.

22. As a result of the release and threatened release of hazardous substances from the Site, the United States has incurred and expects to incur "response" costs, as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

23. The response actions taken by Plaintiff in connection with the Site are not inconsistent with the NCP, 40 C.F.R. Part 300.

FIRST CLAIM FOR RELIEF (THOMASVILLE)

24. Paragraphs 1 through 23 are realleged and incorporated herein by reference.

25. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides that:

(3) [A]ny person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility . . .

from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for --

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan

26. Thomasville, by contract, agreement or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, at the Site of hazardous substances owned or possessed by such Defendant within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

27. Pursuant to Section 107(a), 42 U.S.C. § 9607(a), Thomasville is liable to the United States for all past response costs incurred by the United States in connection with the Site.

28. The United States is also entitled to a declaratory judgment pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that Thomasville is liable to the United States under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all future response costs incurred by the United States relating to the Site.

SECOND CLAIM FOR RELIEF (UNIVAR)

29. Paragraphs 1 through 23, and 25 are realleged and incorporated herein by reference.

30. The Prillaman Company by contract, agreement or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, at the Site of hazardous substances owned or possessed by such Defendant within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

31. Univar is the successor to the Prillaman Company.

32. Pursuant to Section 107(a), 42 U.S.C. § 9607(a), Univar is liable to the United States for all past response costs incurred by the United States in connection with the Site.

33. The United States is also entitled to a declaratory judgment pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that Univar is liable to the United States under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all future response costs incurred by the United States relating to the Site.

THIRD CLAIM FOR RELIEF (BUCKINGHAM COUNTY)

34. Paragraphs 1 through 23 are realleged and incorporated herein by reference.

35. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides that:

(1) [T]he owner and operator of a . . . facility . . .

from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for –

(A) all costs of removal or remedial action incurred by the United States Government. . .not inconsistent with the national contingency plan

36. Buckingham County owns and operates a portion of the Site within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

37. Pursuant to Section 107(a), 42 U.S.C. § 9607(a), Buckingham County is liable to the United States for all past response costs incurred by the United States in connection with the Site.

38. The United States also is entitled to a declaratory judgment pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that Buckingham County is liable to the United States under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all future response costs incurred by the United States relating to the Site.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Court enter:

1. Against the defendants, jointly and severally, a judgment for all costs incurred by the United States through the date of judgment, plus interest, pursuant to Section 107, 42 U.S.C. § 9607;
2. Against the defendants, jointly and severally, a declaratory judgment as to their liability for further response costs that will be binding on a subsequent action or actions to recover further response costs, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2); and
3. Grant such other relief as the Court deems appropriate.

Respectfully submitted,

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